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NOMINATION OF RICHARD Y. ROBERTS

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE NOMINATION OF RICHARD Y. ROBERTS TO BE A COMMISSIONER OF THE SECURITIES AND EXCHANGE COMMISSION

SEPTEMBER 21, 1990

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NOMINATION OF RICHARD Y. ROBERTS TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

FRIDAY, SEPTEMBER 21, 1990

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:45 a.m., in room SD-538 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee) presiding.

Present: Senators Riegle, Shelby, and Dixon.

OPENING REMARKS OF CHAIRMAN RIEGLE

The CHAIRMAN. Senator Heflin, let us invite you on up to the witness table, and Mr. Roberts, as well. We are delighted to have you both this morning as we take up the President's nomination of Richard Roberts to be a member of the Securities and Exchange Commission. I know this is a very important nomination for the country, and I know it is an important one for the two Senators from Alabama.

So we are pleased to have you here, Senator Heflin, and also Senator Shelby who knows of course Mr. Roberts so well because of their close association over the years.

I am going to call on you, Senator Heflin, to make your comments. I know you have other obligations this morning and will probably need to speak and leave. So why do we not hear from you, and then I will yield to Senator Shelby.

STATEMENT OF HOWELL HEFLIN, U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. Well, I am pleased, Mr. Chairman, to be here this morning. I appreciate your courtesies in allowing me to make my statement and to attend to other important business that I have to do today.

I am pleased to introduce my friend and fellow Alabamian, Richard Y. Roberts, but who is known to his friends as "Rick Roberts." As I was coming into the hearing room, a staff fellow working for—I do not know who he works for—said, well, are you going down to say a good word for Rick Roberts? And I said, yes. And he said, well, he is a good fellow.

I think that expresses part of Rick Roberts' background and personality. He is a good fellow. But he is far more than that.

Rick is a very able, very competent individual and can do a great job in any position I believe in Government, certainly such as being nominated as a Commissioner of the Securities and Exchange Commission.

I have known him for many years, and he will serve with distinction. But Rick is far more than just a "good fellow." He has a great background from an educational viewpoint. He has a great background as to his industry, his integrity, and his intelligence.

Hr graduated from Auburn University where he received a Bachelor of Electrical Engineering Degree. One would think that with that he would go into some engineering aspect, but he decided to go into law, showing that he had a variety of interests. He then attended the University of Alabama and received his law degree in 1976, but he believes in continuing to improve himself from an educational viewpoint, and so in 1981, after he had come here, he went on to school and received a Master of Law in Taxation from George Washington University.

He of course served with Senator Shelby as his administrative assistant and his chief legislative director. Then he left a couple of times, and Senator Shelby felt the need to call him back and persuaded him to come back from Alabama.

Then he left later to go with a very prestigious law firm of Miller, Hamilton, Snider, Odom & Bridgeman, and was here in Washington with that group.

So during his professional career he has served as a member of the State Bar Association of Alabama, the American Bar Association, the District of Columbia Bar Association, and the National Association of Bond Lawyers.

So he has had a variety of various interests: taxation, bonds, electrical engineering, all of this plus legislative experience that I think will give him a background that brings something to the Securities and Exchange Commission that probably they have not had before and which, in my judgment, is needed.

He is admitted to practice in all of the various courts of our country.

I do not think I can speak too highly of Rick. He is a fine, dedicated young man and I am confident that he will do an outstanding job as a Commissioner of the Securities and Exchange Commission.

Throughout his career as a practicing attorney and a top assistant to Senator Shelby he has exhibited the highest qualities of intelligence, character, and professional ability.

Therefore, I am pleased to present him to the committee today for consideration on this important position.

If given the opportunity to serve on the Securities and Exchange Commission, I am confident that he will serve with great distinction and will do an outstanding job.

The CHAIRMAN. Well thank you, Senator Heflin. That is a very strong and important statement that you have made, and it carries great weight with me and with the committee.

You certainly have expressed I think a depth of feeling and confidence about this nomination that is a great tribute to the nominee.

So I say to the nominee that he is very fortunate to have your support and such a strong statement from you in his behalf. Let me excuse you. I know you must go.

Let me now turn to Senator Shelby who I know has a very intimate knowledge of this nominee and a very strong feeling about it, and I would like to have Senator Shelby now make his comments.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Chairman, I have a written statement that I would like to be made part of the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

STATEMENT BY SENATOR RICHARD SHELBY

Senator SHELBY. Mr. Chairman, it is a pleasure and an honor to have the opportunity to formally introduce Rick Roberts to this committee today. However, I would first like to express my appreciation to you for so expeditiously scheduling this morning's hearing and to my colleagues who have taken the time to be here during recess.

Mr. Chairman, I am exceedingly pleased that the President of the United States has demonstrated his confidence in Rick Roberts by nominating him to serve as a member of the Securities and Exchange Commission. This agency is charged with performing one of the most crucial functions of our Federal Government, maintaining free and efficient capital markets. As a Securities and Exchange Commissioner, Rick will be charged with enforcing regulations and laws designed to protect investors and to maintain confidence in the integrity of the market. The Commission's role is vitally important to the capital formation process and subsequently to U.S. competitiveness.

Rick Roberts is well-prepared to contribute to the effective performance of the Commission's responsibilities. As an attorney in private practice in Alabama, Rick gained experience in public finance transactions, acting as counsel for issuers and underwriters. More importantly, however, Rick's experience on Capitol Hill will permit him to add a very important congressional perspective to the Commission.

Rick served as my chief of staff for a total period of 7 years and in these years, I have come to know him and his abilities very well. Rick served as my administrative assistant and legislative director for 4 years while I was in the House of Representatives, overseeing issues under the jurisdiction of the Energy and Commerce Committee, of which I was a member. In this capacity, Rick developed a keen perspective of the dynamics of the Energy and Commerce Committee under its current chairman, the Honorable John Dingell, as well as a thorough understanding of the wide spectrum of issues under the committee's purview, including a host of securities and market-related matters.

Rick also served as my administrative assistant and legislative director for more than 3 years of my tenure in the U.S. Senate. In this position, he became familiar with the workings of the Senate and was successful in helping me develop and guide legislation through the committee, floor, and conference processes. In particular, he became very familiar with the diverse range of subjects per-

taining to financial institutions and capital markets under this committee's jurisdiction, including a number of very important securities issues.

Rick's experience as my chief of staff in both the House of Representatives and the U.S. Senate has provided him with a seasoned perspective of the legislative process. I believe that his background will complement the capabilities of the present leadership at the Commission and will be instrumental in assisting the Commission to better accomplish its legislative agenda and ultimately, to provide for the continued improvement in our capital markets.

I have known Rick Roberts for more than 15 years. Over the course of those many years, I have gained great confidence in his intellect and ability. His insight, commitment, and dedication have been extremely helpful to me and to the people of the State of Alabama. Rick Roberts is not one to shirk confrontation with challenge nor place undue emphasis on poplar opinion when values or goals he believes correct are in question. It is this determination and persistance that will characterize his efforts to improve the Commission's effectiveness in enforcement and investor protection programs.

Rick Roberts is a man of great integrity whom I hold in the highest personal regard. It is a great pleasure to recommend him to this committee for its favorable consideration of his nomination.

Without redoing what Senator Heflin said, I do want to introduce, and it is my pleasure to introduce, too, Rick Roberts to this Banking Committee.

As the chairman knows, he has been in this committee off and on for 4 years already. I would not say on a daily basis, but a lot of days consecutively and a lot of nights consecutively because we have worked on a lot of legislation here, and Rick as my administrative assistant and legislative director has been involved in most of this legislation, if not all of it.

I have known Rick Roberts since 1975 when he was a student at the University of Alabama.

He came to work with a little business I have there.

Later I hired him when he graduated from law school, and he practiced law with me and did most of the work, of course, Mr. Chairman. [Laughter.]

The CHAIRMAN. He did the work, you got the credit.

Senator SHELBY. That is right, and the money. [Laughter.]

So he worked with me in Tuscaloosa, AL, practicing law for about 2 years.

When I was first elected to the U.S. House of Representatives in 1978, Rick came to Washington with me as my administrative assistant and legislative director, and was my chief of staff for 4–4½ years, and went to Montgomery, AL, after that.

He practiced law, did some bond work, some securities work; then, in 1986 when I was elected to the U.S. Senate, I talked Rick into coming back up here. He was with me until April.

I believe Rick Roberts will bring to the Securities and Exchange Commission, Mr. Chairman, a perspective that is not there all the time—and that is, a legislative perspective.

He has worked on legislation dealing with the Securities and Exchange Commission from our days serving with your colleague

from Michigan, John Dingell, on the Energy and Commerce Committee which has similar jurisdiction on what we have here in the Banking Committee.

He has continued that, as I just said, on the Banking Committee here.

He is intelligent.

He is diligent.

He is a man of integrity, and I believe that is very important.

I also believe that he will bring a dimension to this committee on both sides of the aisle, Democrats and Republicans, because he knows so many of us here.

He knows the chairman. He knows the ranking member. He knows so many of the Senators and so many of the staffers, and I believe that will add a dimension.

As Chairman Breedon told me one day, he said, I am glad to have him over there.

He said, I am looking forward to working with him. And I said, yes, Mr. Chairman, he will be a lot more loyal to you than I will, you know, on those issues. [Laughter.]

So, Rick, I do commend you, and I do recommend you to the Banking Committee.

I do not know of one agency in America that is more important as far as dealing with the function of our Federal Government in maintaining free, Mr. Chairman, and efficient capital markets, as you have said here.

As a Securities and Exchange Commissioner, you will be in the throes of that, and I believe you are going to do an outstanding job.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Shelby.

I am going to ask that my opening comments with respect to Mr. Roberts also be put into the record.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. Today we will consider the President's nomination of Richard Roberts to be a member of the Securities and Exchange Commission.

For the record, after graduating from the University of Alabama Law School in 1976, Mr. Roberts practiced law with Senator Shelby. When Senator Shelby was elected to the House of Representatives, Mr. Roberts also went to Washington, serving as Senator Shelby's administrative assistant and legislative director for 3 years. During this time, Mr. Roberts earned an advanced law degree—an L.L.M.—from the George Washington School of Law. Mr. Roberts returned to Alabama where he practiced law for 4 years. In 1987 and until earlier this year, Mr. Roberts was Senator Shelby's administrative assistant and legislative director in the Senate. Soon after entering private practice, Mr. Roberts was nominated to be a Commissioner of the Securities and Exchange Commission.

I look forward to your comments. Please be as specific and direct as possible in response to the questions you are asked this morning.

The CHAIRMAN. I will just add a couple of thoughts. First, before we swear you as a witness I am going to ask you to introduce your family to us who I know is here today.

In fact, why do I not do that right now.

This is probably your younger sister right here. [Laughter.]

Mr. ROBERTS. Yes, sir.

This young lady made a mistake 15 years ago, I am afraid, and she is still suffering from that decision. [Laughter.]

This is my wife, Peggy. This is my youngest daughter, Shea; my middle daughter, Stacey; and my son, Clarke.

Mr. Chairman, I think I would be remiss if I did not also say that there are a number of members of my extended family, which are several of my former coworkers, that are here.

The CHAIRMAN. I see.

Mr. ROBERTS. And I certainly appreciate their presence.

The CHAIRMAN. Well, we are delighted to have your family and your other associates and friends here this morning.

It is nice and appropriate that they be here.

I think it is important to say at the outset that you, or any nominee to the Securities and Exchange Commission at this time, are coming at a point where there is tremendous change occurring in our market system, in global markets, and market products.

We have seen volatility in the capital markets.

We see a certain amount of tension and conflict between different types of markets doing different things, and the debate over the degree to which markets are connected or not connected.

But clearly decisions that are required, the judgments about the structure, the judgment about enforcement, the judgment about the rules of the game and practices that we follow—are crucial to our ability to maintain our economic system.

The nature of our system is such that capital has to be accumulated and make its way into our economic system to fuel our growth and the investment that is needed to enable productivity to take place and to increase.

I think probably at no time in many years has the Securities and Exchange Commission been confronted by so many issues on such a scale.

So I think the work of the Commission, while it has always been important, takes on that additional level of meaning and responsibility because of the difficult nature of a number of these new developments and challenges, and the fact that the health and well-being of our economic system depends so importantly on what is done there.

So I view this as one of the most important posts in Government at the present time.

I recall when we had Chairman Breeden in for his confirmation hearing we spent some time discussing a variety of issues, some of which I will discuss with you today, because this particular area of Government is one of the most important areas of Government at this time.

It does not always get a lot of attention because it is somewhat more esoteric than some other areas of work within the Government system, but clearly it is one of the top assignments in Government at the present time.

I know from our conversations you see it that way. You see the importance and the gravity of the work that is before the Commission and intend to approach it in that fashion.

With that, let me ask you, if you will, to stand and raise your right hand.

[Whereupon, Nominee Roberts is duly sworn by the chairman.]

The CHAIRMAN. Please be seated. Before we begin, I have a statement from Senator Dixon to be inserted in the record.

OPENING STATEMENT OF SENATOR DIXON

Senator DIXON. Mr. Chairman, I am pleased to be here this morning as the committee considers the nomination of Richard Roberts to be a member of the Securities and Exchange Commission.

This is a time of enormous challenge for the SEC. Our financial system is in the midst of huge changes. I look forward to hearing the comments of this nominee.

I am pleased to be able to say that I know Rick. His career has demonstrated his ability and sound judgment. I am sure he will make an excellent addition to the Securities and Exchange Commission.

The CHAIRMAN. Let me now invite you to make any opening comments that you have for us. Then, upon completion of those comments, we will begin some questions.

TESTIMONY OF RICHARD Y. ROBERTS, A NOMINEE TO BE A COMMISSIONER OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. ROBERTS. Thank you.

Mr. Chairman, Senator Shelby, it is an honor and privilege to be considered for the position of Commissioner of the Securities and Exchange Commission.

I would like to thank President Bush for the confidence he has shown in me by this nomination.

Also, Mr. Chairman, I would like to thank you and the committee for the expeditious scheduling of this hearing, and the consideration which you and the other members of the committee and its staff have shown me through this process.

I consider the Securities and Exchange Commission one of the finest agencies of the U.S. Government. For over 50 years the Commission has demonstrated effectiveness and dedication in protecting investors and maintaining the integrity of our securities markets.

I would be very proud to join an agency which is so well respected and, if confirmed, I will devote my full efforts to maintaining and improving the record of the Commission.

For over 7 years, it was my privilege, as an employee on separate occasions of the House and of the Senate, to observe and participate as Congressmen grappled with a wide variety of difficult public policy issues, including many in the securities area.

I would hope to be able to bring a useful congressional perspective to the Commission's work. I have also worked on large transactions in the competitive marketplace, including extensive work in the area of public finance.

I believe that it is important to continue the strong tradition that the Commission has established in the area of enforcement. An effective and aggressive enforcement program will continue to be essential to deter wrong-doers, preserve the integrity of the securities markets, and thereby maintain the investor confidence that is vital for capital formation. It is my intention that the Commission should continue to stop manipulative practices that compromise the character and fairness of our capital markets. It should be market forces that are driving the market results, and not fraud and collusion.

I also believe that it is important to prepare for the internationalization of our capital markets. As a result of technological advances, our securities markets have become more interdepedent and far more international. One of the more difficult challenges facing the Commission is to coordinate the regulation of international financial markets and adapt successfully to global market forces. It is incumbent upon the Commission to understand the market forces, both domestic and international, that are shaping our markets, to identify where the systemic risks lie before they cause damage, rather than afterward, and to design systems that will help control those risks.

I believe that my personal integrity and commitment to public service, my professional training and experience, and my experience working for Congress will all serve me well in addressing the challenges that face the Commission.

If confirmed, I look forward to working very closely with this committee and its staff in the future and stand ready to answer any questions you or other members of the committee may have.

The CHAIRMAN. Very good.

I appreciate your comments. It is a good statement.

Let me now start out with some items that I would like to have your opinion on.

In 1988, as you may recall, I introduced legislation that would have established a statutory definition for "insider trading." I have very strong feelings about that issue in making sure that we really know where the ground rules and the boundary lines are, and that we really crack down hard on abuse. That bill, as you know, did not get enacted into law.

In light of the second circuit's decision in *Chestman*, do you believe we should enact a statutory definition for "insider trading"?

Mr. ROBERTS. Mr. Chairman, in the past I have been inclined to support a statutory definition of "insider trading." I know full well that there are drafting problems encountered with any such attempts.

In light of the fact that *Chestman* will be reheard, hopefully in the near future, by the second circuit *en banc*, I am of the opinion that a decision on any statutory definition should be deferred until the outcome of that litigation.

The CHAIRMAN. Well, I want you to follow that closely because there is always the question as to whether or not the courts ought to do the work that the law-writers ought to do.

That was the subject of discussion in the Souter nomination and has been gone over any number of times.

So I want to be sure that we have a clear sense as to whether or not there is a need for a legal clarification which may require a rewriting of some part of the law in this area. So we will talk further with you about that as time goes on.

Let me ask you a second question. In June of this year, the Treasury sent us the Capital Markets Competition Stability and Fairness Act of 1990, as it was labeled. When he testified on the bill, Secretary Brady stated, and I quote him, that:

> The single most important step Congress can take to reduce both the likelihood of major market disruptions and the severity of their consequences is to unify regulation for the one market.

So said Secretary Brady. In addition, Chairman Breeden has stated that the SEC strongly supports this legislation.

My question to you is: Do you think that the Capital Markets Competition Stability and Fairness Act should be enacted?

Mr. ROBERTS. Mr. Chairman, if I was designing a regulatory system in 1933, knowing what I know today, I would certainly have stock index futures, stock options, and stocks under one regulatory umbrella. That is not the situation that we are facing today.

My sense is that inertia will work against any change in jurisdiction.

There appears to be no congressional consensus to change jurisdiction at this point in time. My review of the negotiations has led me to conclude that a better, more successful attempt at this time would be to pursue the compromise that has been mentioned to me which is the consolidation of margin authority, the rewriting of the exclusivity clause, and the improving of communication lines between the SEC and the CFTC.

The CHAIRMAN. When you talked to people in the administration about your nomination, did they raise this issue with you?

Mr. ROBERTS. No sir, they did not.

Mr. CHAIRMAN. So your view would be then, I take it from what you just said, and you were quite precise in your response, it is another way of saying you are not prepared to indicate support for this proposal?

Mr. ROBERTS. I have not developed a position with respect to the legislation. I have developed a position with respect to the compromise as I know it.

The CHAIRMAN. With respect to the margin levels that we have in the securities and the futures markets, do they strike you as being at the proper levels? Do you have a concern in that area?

Mr. ROBERTS. Yes, sir, I have a concern. Obviously some of those margins are not within the jurisdiction of the Commission in terms of either enforcement or ability to set them.

I know that options margins, for example, are set by the SRO's and the Commission I believe has to approve them. Stocks for example, I believe are set by the Fed, and the Fed interprets those requirements, and the Commission enforces them. It is my understanding that in terms of stock index futures the margins are basically set by the industry. As a general proposition I do believe that the margin-setting authority should lie with a Federal authority.

There has been almost a compelling argument made that margins have been too low on occasion for stock index futures, and I would tend to agree with that statement.

The CHAIRMAN. So I take what you have just said to mean that there does need to be a Federal authority in place as far as margin-setting and adjustment.

Does that extend to the notion that we ought to have a way of coordinating what goes on in these different markets so that we have not just a Federal means of doing it, but that the Federal effort is coordinated across the markets?

Mr. ROBERTS. Certainly more harmony in coordination would be useful. Whatever decision Congress makes with respect to jurisdiction or margin-setting authority, if confirmed, one of the things that I intend to accomplish as a Commissioner is to improve communications between the SEC and the CFTC, entering into possibly more of a spirit of cooperation, with the CFTC.

The CHAIRMAN. I am going to pose one more question and then yield to Senator Shelby for questions that he would have, but let me move to the enforcement issue.

As you know, the Commission has had a number of very important enforcement cases to have to bring and deal with in the last few years.

I think it is very important that we have from you what I have asked from other SEC nominees. That is, a direct question and response and assurance that I would hope to hear, but can you assure the committee that you will be a vigorous enforcer of the Federal Securities laws?

Mr. ROBERTS. Yes. I believe that enforcement is probably the largest role that the Commission should play in the markets. One of my goals in the long term would be to strengthen investor confidence in our capital markets. I think an active and vigorous enforcement program can go a long way toward accomplishing that.

The CHAIRMAN. Do you believe that securities law enforcement action should be brought against both individuals and organizations?

Mr. ROBERTS. Yes, sir. I believe the perpetrators of fraud, be they organizations or individuals, should be discovered and severely punished.

The CHAIRMAN. If we assume that the Securities Law Enforcement Remedies Act is actually enacted, and I think it will be, does the SEC in your view have a sufficient number of administrative law judges to handle matters related to the SEC's new cease and desist authority?

Mr. ROBERTS. Well obviously I have not been confirmed, and I have not been able to observe first-hand the administrative process, but it is my understanding that Commissioner Schapiro is in charge of a task force to review the efficiency of administrative proceedings.

Obviously, once the remedies bill is enacted—and I am confident that it will be—there could be a very large increase in administrative proceedings, and there is currently a backlog.

There must be some work done to streamline the process and make it more efficient, and I certainly will encourage Commission-

er Schapiro and would join with the other Commissioners in bringing that process along.

The CHAIRMAN. Do you think the SEC has taken sufficient steps to prevent frontrunning?

Mr. ROBERTS. I have some concerns in that it appears that frontrunning, for the most part frontrunning investigations, are being routed out primarily through referrals from the self-regulatory organizations.

And basically in terms of being alert for frontrunning problems, the SRO's have been bringing them to the Commission as opposed to the Commission initiating those investigations, which is of concern to me.

It is something that I certainly want to take a long look at. I am not sure if our gathering of evidence is far enough along or that we are receiving enough information quickly enough to be able to investigate and prosecute frontrunning, which I regard as a very serious problem.

The CHAIRMAN. In yielding, I want to just say, I want to say to your son over here in the front row who is watching you very intently and listening to your questions and answers and really trying to follow it, I want to tell you your dad is doing very well. [Laughter.]

This shows you what happens when you do your homework. When you are well prepared and you have to respond to questions, it shows. You are seeing that in your dad here right now.

Mr. ROBERTS. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shelby.

Mr. ROBERTS. My son is pleased to be here, primarily because he is missing school. [Laughter.]

Senator SHELBY. Rick, what about the current arbitration process? Do you believe it is working and it is fair to investors?

I believe that there is a perception in the country, and I hear about it from time to time, that our present arbitration system dealing with securities is tilted toward the dealer and not the purchaser of the securities.

How do you feel about that, and what do you think should be done?

Mr. ROBERTS. Well, the perception in many quarters is that the arbitration system is unfair. There is very little choice given to investors in most arbitration agreements.

I know the Commission has taken some steps both to improve the procedural fairness of arbitration proceedings, and also to emphasize the disclosure to investors when they sign these agreements that they are surrendering certain rights.

Arbitration I think plays a very big role in the process. It is important to be able to bring small cases without going to court. I think they can be brought less expensively, and decisions could be made more quickly. So to that end, arbitration is very useful.

I would like to see some more flexibility on the part of industry with respect to the forums that are available to investors. While I would not want to prejudge the area, it is certainly an area that I intend to be more attentive to. And I would, as an initial proposition, encourage industry to move in that direction.

I believe the GAO is undertaking a study of the arbitration process. It is very important if we are to strengthen investor confidence in the markets, that the arbitration process not only operate fairly but be perceived as operating fairly. And I am not sure that it is at this time.

Senator SHELBY. Let me get into something that I have had an interest in for some time. That is, enforcing margin requirements.

I asked Chairman Breeden that right before this Banking Committee about that, and I talked with Alan Greenspan about the same thing.

Do you believe it would be beneficial to provide for a private right of action for the enforcement of margin requirements in the tender offer area? Or do you believe that SEC could do that?

Mr. ROBERTS. I am not prepared at this time to endorse a private right of action to enforce margin requirements. I have been troubled by margin requirement enforcement in the tender offer area in the past. There appears, at least from a staff member perspective in terms of information requests, that there has been a lack of communication between the Fed and the Commission in this area.

There is a concern on the other hand, however, that with a private right of action you would end up with inconsistent court decisions which could be a problem. It is an area that bears close attention, and I certainly would like to improve the enforcement of margin requirements in the tender offer area and try to eliminate some of the communication problems that have appeared in the past.

Senator SHELBY. But many of us know from this vantage point up here that there were some leverage buyouts made that became in trouble subsequently that if the margin requirements had been enforced these problems never would have occurred. So this is the stickler here, as you well know.

If the Federal Reserve is working well on the enforcement of margin requirements, fine. But I do not believe it has been working in the past, and that spawns my interest.

Mr. ROBERTS. Well, at a minimum, there appears to have been a lack of communication between the agencies, which gives me great concern. I intend to take some steps to improve those communications.

I have said that it is my guess that there were margin requirement violations that occurred in the tender offer area in the 1980's that were not enforced.

Senator SHELBY. As far as the internationalization of the securities markets, which is happening right now this minute all over the world, the globalization concept, in your opinion do we presently in the United States have a regulatory system, and particularly the SEC, that if confirmed you would be a member of, does it need to do more to keep up with this internationalization? It seems like it has just exploded. We can tell just from being here on the Banking Committee.

Mr. ROBERTS. Well, it is exploding. I am not here to be a bellringer for the Commission, but I will say that the Commission has made great strides in the international area, such as in enforcement through various memoranda of understanding which have been entered into with various countries.

I know that there are a number of international accounting and auditing organizations which we participate in that are working very hard toward more uniform auditing and accounting standards, which are very important and probably the key to globalization.

I also know that we, meaning the Commission which I hope to be a part of, has a proposal with Canada outstanding which provides for across-the-border tender offers, assuming the threshold of domestic investment does not exceed 20 percent, I believe. And there is a concept release that has been issued to further encourage other efforts, not only on a bilateral stage but a unilateral stage.

Progress has been made, and I certainly want to commend the Commission on this progress and look forward to expediting the process.

Senator SHELBY. What would be your top two or three enforcement priorities, if you were confirmed and were a member of the SEC?

Mr. ROBERTS. Well, I think routing out insider trading is most important. Stopping penny-stock fraud is also very important. I think penalizing fraudulent investment advisers is very important too, particularly in my native region of the country.

The executive director of the securities commission in my native State has indicated to me that 90 percent of the financial fraud in that area is committed by investment advisers.

Senator SHELBY. Are you familiar with the SEC rule 144(a)?

Mr. ROBERTS. Yes, sir.

Senator SHELBY. Some people believe it has received mixed reviews. What is your opinion of that?

Mr. ROBERTS. A grave concern has been expressed that it may result in a fragmentation of the market system. I share that concern. It troubles me to see the development of a private market.

Our strength in our securities system has always been a broad resale market and the liquidity of our secondary market, which is public. If we develop a public A market and a private B market, I believe that it takes away from that liquidity.

From personal experience from the legal side, there is a danger that the best issues, the cream of the crop, will go to the private market, be diverted away from the public market, and that if the private resale market continues to develop it could also engender arbitrage possibilities between the two markets. So it does give me concern.

Yet, at the same time, I know that the private resale market has been blossoming and that the rule was implemented as a way to encourage the free growth of capital which is very important. But it does concern me greatly.

Senator SHELBY. Is the integrity of the markets, the reality of it and also the perception of it, one of the most important things as far as governing by the SEC in oversight?

Mr. ROBERTS. Well, I think that our public securities market has always been held hostage to psychology, so it is very important that it operate in a stable and honest manner.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Shelby.

As you probably saw in the paper this morning, and you may have heard on the news, the Fed has made a decision with respect to allowing a bank to take a new step into the securities business.

35-604 0 - 90 - 2

Do you have an opinion on Glass-Steagall? Do you think it ought to be repealed?

Mr. ROBERTS. Yes, sir, I do. And I did read the article in the paper. As an ex-staff member, I am concerned that jurisdiction in this area seems to be ceded from Congress to the Fed, and I would very much like to see the Congress take back their jurisdiction.

The CHAIRMAN. Well, we would like to have our jurisdiction and we would like to exercise our jurisdiction. We try at different times, and we have had a pattern of efforts in that regard in initiatives within the Senate, within the committee, within the Senate as a whole, that have not become law.

But with respect to your own view on Glass-Steagall, do you think the time has come to repeal Glass-Steagall? Do you have a personal opinion?

Mr. ROBERTS. Yes, I do believe it is time for us to embark upon an area of financial modernization and the repeal of Glass-Steagall would be a step in that process.

I have reviewed Chairman Breeden's testimony to this committee. I generally agree with the tenor of those comments. I believe that, along with the repeal of Glass-Steagall, there should be some amendments to the Bank Holding Company Act, as well.

The CHAIRMAN. Are you concerned about—you know, we have had a very unpleasant experience with insured deposits in the savings and loan industry. Do you have any concern about that in the banking industry?

Mr. ROBERTS. Well, yes sir, I do. I certainly do not want to extend the safety net, the depository safety net, to securities activities. I think that is very important.

I know that some legislation that you worked very hard on in the past, and which I thought was an excellent legislative response at the time, would certainly have added a number of protections to prevent that from happening.

The CHAIRMAN. So your testimony would be that if Glass-Steagall were repealed and banks get into the securities business, that it ought to be walled off in a way that protects the insured deposit base and the Federal Deposit System?

Mr. ROBERTS. Very much so. I think it would be very important that it be walled off; that the securities units be separately capitalized and could not draw off the capital of the bank and lean on the depository safety net, and that there be regulations in place to prevent the perennial conflicts of interest that occur when banks, and financial institutions in general, delve into other activities.

The CHAIRMAN. If that step is taken, or one like that, would it be your view that the SEC should have jurisdiction over all the securities activities of banks and thrifts?

Mr. ROBERTS. Yes sir, it is. The SEC has for over 50 years done an excellent job, in my opinion, in this area. It has developed quite a bit of expertise. I believe that expertise could be put to good use in the financial institution area just as it has in other areas.

The CHAIRMAN. Do you have any thoughts to the extent that the banks go into the securities business in a more complete way as to how the separation would be established? In other words, what specifically do you think would need to be done to keep the banking

activities separate and apart and unconnected to the securities activities.

Mr. ROBERTS. Well, I think that in general the securities activities should be required to be conducted in an affiliate or a subsidiary, and that that form of organization should be vigilantly maintained.

I believe that such securities subsidiary should be separately capitalized; that the outflow of capital from the subsidiary should be monitored very carefully.

There are a number of regulations that I could conceive being promulgated to prevent the inherent conflicts of interest that occur when financial institutions delve into nonbanking lines of business, and it is very important that although those requirements should be cost-effective, they are rigid as well.

The CHAIRMAN. So the problem of tie-in arrangements would be something that you would want looked at carefully and prevented? Is that it?

Mr. ROBERTS. Yes, sir. That is correct.

The CHAIRMAN. Would your view of the SEC having authority over securities activities of banks or thrifts, would that lead you to the next step to say that in any kind of a revised financial structure in the future, a financial modernization type rearrangement, that you should have functional regulation in terms of the regulatory rules and oversight?

Mr. ROBERTS. Yes. The functional regulatory concept as it has been explained, is attractive to me. I believe that the SEC should have jurisdiction over the regulation of the securities aspects of financial institutions. At the same time, I think it is important that the bank regulators are able to maintain the effective supervision over the banking portions of their activities, and functional regulation is in general an attractive concept.

The CHAIRMAN. Have you given any thought to, if we go that route and we have got these new sort of financial institutions that have new lines of business, a single regulator on top of all of that to make sure that all the parts are connected properly?

Mr. ROBERTS. I would not want to prejudge the issue and I would like the benefit of discussions with the Commission staff on the subject if I am confirmed, at least at our initial stage, I believe that the dominant regulator, if it is basically a bank holding company and the dominant institution is the banking industry, should be a bank regulator.

The CHAIRMAN. We have spent a lot of time in this committee in years past trying to deal with the issue of tender offer changes. We obviously had a whole burst of hostile takeover activity during the 1980's, and I think a lot of it was not good for the country. A lot of this activity involved market abuse, some of which have now come to light—there have been a lot of cases brought in that area. But quite apart from overtly improper activity, do you see ways in which the tender offer process itself could be improved to help the markets and help investor confidence beyond the way the law sits today?

Mr. ROBERTS. I certainly believe that the 13(d) window should be closed. I think the Commission has supported in the past closing the window to 5 days, leaving the 5 percent amount the same, but

also incorporating in there a stand-still requirement which is attractive to me. I certainly think that should be done. Obviously that would have to be done legislatively.

I know that in terms of the tender offer area there have been some disclosure requirements that have been revamped to some extent which, if we enter into another era of a rash of takeovers, could help us avoid some of the problems that were encountered in the past.

I also know in connection with tender offers and in general that the Commission is studying the proxy process to see if any improvements can be made in that area, as well.

The CHAIRMAN. Would you support an effort to try to just do a stand-alone item on closing the 10-day window. The further out we get we run into all kinds of different ideas and controversy and so forth, but would that be an attractive idea to you?

Mr. ROBERTS. It would.

The CHAIRMAN. Earlier, when you were discussing with Senator Shelby the arbitration issue, the information I have is that the Southern District of New York District Court just determined that punitive damages are not available in arbitration cases, although such damages are available in litigation.

My question would be, is this fair? Would this difference perhaps harm investor confidence in securities arbitration?

Mr. ROBERTS. Well, I am concerned that as a result of this decision the only remedy available to investors is basically the return of their funds and any other contract damages they may be able to prove, which is extremely difficult. It concerns me greatly, particularly since, I think, the decision rested on New York State law, which is where I assume most of the arbitration proceedings are originated.

So I believe that the arbitration system is very important; that it both operates fairly and is perceived to operate fairly; and it would be in my mind in the best interest of the industry to address this issue. It would go a long way to restoring investor confidence in our capital markets.

The CHAIRMAN. Senator Shelby, let me yield to you.

Senator SHELBY. Mr. Chairman, I do not have any further questions. You are covering a lot of ground. I have covered some of the ground. So if you want to continue.

The CHAIRMAN. Let me raise a couple of other things with you here. This is more in a philosophic range, but there is going to have to be some philosophy applied over there in terms of some of the big questions that loom.

We have been undertaking in this committee, as you know, a series of hearings last year and this year on the competitiveness of the United States in this new world economy. We have had some of the finest minds and thinkers in the country come and appear before us.

We have had people out of the financial sector like Felix Rohatyn and Gerald Corrigan and others of that sort; John Reed of Citicorp. We have had top industrial leaders. We have had Bobby Inmann come in with his expertise. And we have had Frank Carlucci, a former Defense Secretary. And just this last week, within the last week, we had the former CEO of Ford Motor Co., Don Pe-

tersen who is probably as skilled an international CEO type in heavy manufacturing as there is. That is just a part of a long list that we have had. We have had probably approaching 10 or 12 hearings now stretched over roughly a year and three-quarters.

What comes through again and again from people who are really out there trying to do an effective job in their economic sector in trying to help an American enterprise do well in this new global economy is they all reflect this concern of a tilt in our time horizon, short-term versus long-term, and an increasing pattern of losing a longer term investment orientation and planning horizon in the United States and being pulled back more and more to a short-term almost immediate-term horizon.

Many of them have connected this to the way the markets work today and the rise of institutional investors, and the fact that 90-day earning statements have become more and more the measure of whether or not stocks are in vogue or out of vogue and where money goes and is available.

We are looking at that over in the Finance Committee right now with respect to some ideas that Secretary Brady has raised from time to time as to whether or not we ought to be looking at changing the capital gains tax laws so that there is a timing factor involved, so that if there is going to be any tilt you sort of tilt toward longer term investment because if you do not have a longer term perspective oftentimes you cannot do the front-end investment that yields big dividends later.

It looks to me, from other testimony we have had from other SEC chairmen, John Shad prior of course to Ruder and to Breeden, that a lot of the stock trading that is done these days is not exactly churning, but it sort of looks like churning. It is done by institutional investors. It is done on short-term considerations in many cases.

It seems to be linked to the futures markets, oftentimes, in terms of sort of playing market differentials in the same day, in the same hour, in the same quarter-hour and so forth.

To bring it all back, many of these expert witnesses that we have had speak to us have expressed the concern that the pattern which seems to be growing and becoming more pervasive is not only chasing out the small investor and causing some loss in investor confidence—because people feel they cannot go in and shoulder against the big boys who were sort of playing off this trading mentality—but it also raises the question as to whether the capital markets are able to carry out their historic function of attracting new capital in and acting as a transmission belt to get capital out to companies, large and small, new and old, to enable them to build themselves and create the jobs, and create the new products and the new services and the economic growth for the future.

I have sort of laid out a large sort of philosophic combination of points there, but I would like your thinking as to any thoughts you have on this short-term versus long-term problem that seems to be out there and that so many key witnesses are now coming in and saying, look, this is a real problem for America's future. Something has to be done about this.

I am just wondering what thoughts you might have on this.

Mr. ROBERTS. Well, I too am concerned about the short-term pressures that exist in our economy today. I think there are some steps that can be taken to try to alleviate this problem, although it is not within the jurisdiction of the Commission.

I think some changes can be made in terms of tax policy to create incentives for long-term investment through various ways. I would also like to point out that what a number of people do not seem to pay attention to, at least retail investors anyway, is that historically investment in equities over the long term have fared very well. That is very important.

I believe that if we can present an appearance of orderly, stable, and honest markets, that is very important. The Commission can help by continuing to act very vigorously in the enforcement area.

I think that I do want to bring up an enforcement point here. You mentioned churning. Churning in a thin market is a very real problem, and I believe that what may be occurring now is more than just legitimate transactions. Historically that has been the case when markets are thin.

There have been steps taken on the Commission to try and damp market volatility which gives the appearance of a more layered, orderly, stable market, which is very important. So there are some short-term steps that can be taken

In the long term, I think the best thing that could happen would be to solve the budget deficit and possibly some changes in tax policy.

The CHAIRMAN. I am going to finish on a couple of thoughts. That is, you have spent a long time in public service, and you obviously care deeply about it because you have committed so much of your professional life to it, and you have gone ahead and you have added advanced degrees in terms of your educational efforts, and your family has obviously supported you in that effort. So you certainly show a pattern of very serious and dedicated work, both in the public sector and the private sector.

I want to say to you what I say to all nominees that come in for positions like this. That is, that I think it is important that you feel clear in your mind and assure the committee that you will be absolutely independent in your views and in your conduct and activities on the Commission; that if at any time anybody in the administrative branch of Government or the legislative branch of Government, or any other place comes in to try to sell a point of view, it is one thing to listen, but it is another thing to preserve your own absolute independence and your own absolute freedom of judgment.

I assume that you fully intend to do that?

Mr. ROBERTS. Yes. The Commission was created in 1934 as an independent, nonpartisan agency. It is one of the finest agencies because it adheres zealously to that independence. If confirmed, I certainly intend to comply with that congressional mandate.

The CHAIRMAN. Also, I would hope that you would feel that if at any time there is any problem that you see—insufficient staff, insufficient legal authority, new problems that require legislative response that come on the radar screen—I would also like to know that you would feel that that kind of an observation on your part would carry an automatic requirement to alert us here. I do not mean not to be a team player on the Commission and so forth, but

I think if you see something that is amiss and that requires work by the Congress in terms of a change in law or appropriations for additional staff of particular kinds or what have you, I would expect that you would very promptly identify that to us.

Can I be sure that you will?

Mr. ROBERTS. Mr. Chairman, I guess at this point in time it would be appropriate for me to interject that the Commission has taken a number of steps to point out to me the problems that they are facing as a result of the pay cap, and I know this committee has addressed that.

I believe that the Congress will address that problem, hopefully in the near future.

I think the most pressing resource problem in the Commission is that our attorneys can go across the street and work for another regulator doing the same job and make $10- to $20,000 more.

The turnover rate in the Commission is a problem for that reason. The Commission has always been proud of the high caliber and quality of its staff, and the elimination of the pay cap would go a long way to maintaining the caliber and quality of its staff, and to reducing the turnover ratio.

The CHAIRMAN. Well on that point I strongly agree with you. I led that fight with respect to the bank regulators because we found that we were not able to hire and retain the kinds of people we needed, and they were being outgunned on the other side of the table.

So we have managed to do something in that area and we need to with the SEC.

But with respect to my question then, I want to be sure that I have got an assurance from you that anything you see at any point in time in the future with respect to changes in the law, gaps in the law, new problems, resource requirements being unmet, or any other difficulties, that you will so report to us so that we are in a position to know it and attempt to respond.

Mr. ROBERTS. I will pledge to be vigilant, if I determine that there are resource shortages, as I am sure there will be, from time to time, and I understand have been in the past.

I will certainly bring that to the attention of this committee and would be pleased to do so.

The CHAIRMAN. Very good.

Senator Shelby, any other comments from you?

Senator SHELBY. Just to commend you, Mr. Chairman, for calling this hearing and for your courtesies and so forth. I appreciate it, and especially on a Friday morning.

The CHAIRMAN. Very good.

We appreciate your testimony today. I think you answers have been direct and straightforward, and the committee appreciates that, and I do, and we are delighted that your family was able to be here, and we wish you well.

Mr. ROBERTS. Thank you, Mr. Chairman.

The CHAIRMAN. The committee stands in recess.

[Whereupon, at 10:55 a.m., the committee was adjourned, subject to the call of the Chair.]

[Biographical sketch and answers to written questions follow:]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL
6-6

August 27, 1990

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Riegle:

In connection with the nomination of Richard Y. Roberts, as a Commissioner of the Securities and Exchange Commission, I have reviewed Mr. Roberts' August 21, 1990 memorandum to me outlining his compliance with the provisions of Rule 5 of the Commission's Conduct Regulation and proposals to deal with conflicts of interest; Mr. Roberts' SF 278, dated July 31, 1990; and the Committee's "Statement for Completion by Presidential Nominees." On the basis of that review, I have certified that there is nothing in these documents which would indicate that, if confirmed, Mr. Roberts would be in violation of the requirements of the Commission's Conduct Regulation, its Canons of Ethics for Members of the Commission, or Executive Order 12674.

Enclosed are my certification and the materials upon which my review was based. I am also transmitting, under separate cover, 50 copies of the non-confidential portion of the "Statement for Completion of Presidential Nominees."

If you or your staff have any questions concerning my Certification, please feel free to contact either Lyn Blatch, the Commission's Ethics Counsel, or me.

Sincerely,

James R. Doty
General Counsel

Enclosures

MEMORANDUM

August 21, 1990

TO: James R. Doty, General Counsel
Securities and Exchange Commission

FROM: Richard Y. Roberts RYR

SUBJECT: Your certification to the Senate Committee on Banking, Housing, and Urban Affairs and to the Director of the Office of Government Ethics with regard to my confirmation as a Commissioner of the United States Securities and Exchange Commission.

At your request, I am furnishing you with the following information:

1. Rule 5 of the Regulation Regarding Conduct of Members and Employees and Former Members and Employees of the Securities and Exchange Commission ("Conduct Regulation"), 17 CFR 200.735-5.

I have been furnished with a copy of the Securities and Exchange Commission's Conduct Regulation, which I have read. I hereby certify that, to the best of my knowledge, I have fully complied with all the provisions of Rule 5 of that regulation, and I am not in violation of any of its provisions. I further certify that my spouse, my dependent children, and I own no securities which are not disclosed or referred to in: (1) the attached financial disclosure report Form 278, dated, July 31, 1990; and (2) the attached statement I have caused to be prepared for the Senate Committee on Banking, Housing, and Urban Affairs.

As noted in the attached Form 278, in the form of an IRA plan, I own shares in the Merrill Lynch Fund for Tomorrow; and I also have a minimal amount of money held in the Merrill Lynch sweep fund. Both of these funds are investment companies registered under the Investment Company Act of 1940. I am advised that Rule 5-5(b) of the Commission's Conduct Regulation, 17 CFR 200.735-5(k), provides that no member shall purchase such shares but may retain shares owned at the time of entry on duty, and may reinvest capital or income dividends received on shares acquired prior to entry on duty. Accordingly, it is my understanding that I may retain these holdings and continue dividend reinvestment.

Other than as noted in the attached Form 278 in the form of an IRA plan with Merrill, Lynch, Pierce, Fenner & Smith, neither

my spouse, my dependent children, nor I have accounts with securities firms. My spouse does contribute to a non-qualified tax deferred annuity program called Privileged Assets operated by Amex Life Assurance Company, an American Express subsidiary. My brother, Ronald Brown Roberts, is vice-president of First Alabama Bank, Birmingham, Alabama. To the best of my knowledge, no other member of my immediate family is an officer or director of any securities firm, investment company, investment adviser, registered public utility holding company or any of its affiliates, or of any company which has public security holders.

2. Executive Order No. 12674, 54 Fed. Reg. 15159, April 12, 1989.

I have read Executive Order No. 12674 which prescribes the principles of ethical conduct for officers and employees of the Federal Government. I hereby certify that, except as disclosed in the attached Form 278 and the statement I have caused to be prepared for the Senate Committee on Banking, Housing, and Urban Affairs, I am not an employee, officer, owner, director, trustee, partner, adviser, or consultant of any corporation, company, firm, partnership, non-profit organization, or educational or other institution or enterprise. Nor, except as disclosed therein, do I have any continuing financial interests in any such entity through pension or retirement plan, share income, ownership of stocks, bonds, or other securities, or otherwise as a result of any current or prior employment or professional associations.

At the time I submitted the attached disclosure Form 278, I was a partner in the Miller, Hamilton, Snider, Odom & Bridgeman law firm (hereinafter referred to as "Miller, Hamilton"). I certify that I will withdraw from the partnership and sever all ties with Miller, Hamilton prior to taking my oath of office as a Commissioner.

I am also a director of The Pilot Group, L.C., a financial institution consulting firm. I certify that I will resign from this position prior to taking my oath of office as Commissioner.

I further certify that I have no creditors other than entities to which I am indebted as a result of (1) various retail charge accounts and credit card accounts; (2) the mortgage in connection with my personal residence; and (3) an unsecured promissory note of less than $10,000 to SouthTrust Bank, Montgomery, Alabama.

3. Proposal to Deal with Possible Conflicts of Interest.

I have been furnished with a copy of 18 U.S.C. 208, as amended by the Ethics Reform Act of 1989, and the Canons of

Ethics for members of the Securities and Exchange Commission, 17 CFR 200.50, et seq., which I have read. I understand that, as required by 18 U.S.C. 208, I must recuse myself from any matters which involve or may substantially affect a financial interest of my spouse, my dependent children or myself, or I must obtain a written waiver of such disqualification under 18 U.S.C. 208(b)(1). This includes the financial interest that I have in the registered investment companies referred to above and that my spouse has in Privileged Assets as referred to above.

In the attached statement I have caused to be prepared for the Senate Committee on Banking, Housing, and Urban Affairs, I have stated that I intend to resolve possible conflicts of interest by disqualifying and recusing myself from certain matters before the Commission, as described in that disqualification statement, where Miller, Hamilton or The Pilot Group, L.C., represents any party or where I had any connection with or gained significant knowledge of a matter while I was with Miller, Hamilton or The Pilot Group, L.C., or whether certain clients of Miller, Hamilton or The Pilot Group, L.C., are involved.

In addition, I intend to recuse myself, on a case-by-case basis, with respect to any matter where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest.

Notwithstanding all of the foregoing, however, in general it is not my intention to recuse myself from general policy considerations, rule-making proceedings, or legislation.

Attachments
memo.ryr

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Roberts (LAST) Richard (FIRST) Young (MIDDLE)

Position to which nominated: Commissioner Securities and Exchange Commission Date of nomination: August 1990

Date of birth: 3 (DAY) July (MONTH) 1951 (YEAR) Place of birth: Birmingham, Alabama

Marital status: Married Full name of spouse: Peggy Frew Roberts

Name and ages of children:

Clark Young Roberts	12 years
Stacey Elaine Roberts	10 years
Shea Cameron Roberts	6 years

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Auburn University	9/69 - 8/73	B.E.E.	8/73
University of Alabama School of Law	8/73 - 5/76	J.D.	5/76
The George Washington University School of Law	9/79 - 5/81	LL.M.	5/81

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Eagle Scout

Tau Beta Pi and Eta Kappa Nu
(scholastic engineering honor societies, Auburn University)

Dean's List (Auburn University)

Phi Eta Sigma
(scholarship, freshman, Auburn University)

University Scholarship Award (University of Alabama School of Law)

American Jurisprudence Prize (University of Alabama School of Law)

Bench and Bar Legal Honor Society (University of Alabama School of Law)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
American Bar Association		7/83 to Present
District of Columbia Bar Association		3/82 to Present
Alabama State Bar Association	Chairman, Committee on Sections 1985-86	9/76 to Present
National Association of Bond Lawyers		6/84 to Present
Kiwanis Club of Montgomery		3/83 to 2/87
Indian Hills Country Club		10/76 to 12/78
116 Club		3/90 to Present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and dates of inclusive employment.

See Attachment A

ATTACHMENT A

Employment Record:

Position	Employer & Address	Dates
Partner	Miller, Hamilton, Snider, Odom & Bridgeman 1747 Pennsylvania Avenue, N.W. Suite 1150 Washington, D.C. 20006	4/90 - Present
Director	The Pilot Group, L.C. Suite 1150 Firststate Tower 255 South Orange Avenue Orlando, Florida 32801	6/90 - Present
Administrative Assistant/Legislative Director	Senator Richard Shelby 313 Hart Building Washington, D.C. 20510	1/87 - 4/90
Of Counsel	Perry O. Hooper, Sr. 456 South Court Street Montgomery, AL 36104	10/85 - 1/87
Partner	Perry, Russell & Roberts 111 Washington Avenue Montgomery, AL 36104	8/84 to 9/85
Partner	Pappanastos, Samford & Roberts 1 Court Square Montgomery, AL 36104	1/83 to 8/84
Adminstrative Assistant/Legislative Director	Congressman Richard Shelby 1704 Longworth Building Washington, D.C. 20510	1/79 - 12/82
Associate	Richard Shelby 324 First Federal Building Tuscaloosa, AL 35401	8/76 - 1/79
Law Clerk	Tuscaloosa Title Company 425 First Federal Building Tuscaloosa, AL 35401	5/75 - 8/76
Laborer	Alabama Highway Department Alabama Highway Dept. Bldg. Montgomery, AL 36104	6/74 - 9/74
Cooperative Student	Alabama Power Company 600 N. 18th Street Birmingham, AL 35291	6/70 - 3/73

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part-time service or positions.

Administrative Assistant and Legislative Director for Senator Richard Shelby, Democrat, Alabama, United States Senate, Washington, D.C. January 1987 - April 1990

Administrative Assistant and Legislative Director for Representative Richard Shelby, Democrat, Alabama, United States House of Representativ Washington, D.C. January 1979 -- December 1982

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None

Political affiliations and activities: List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Volunteer, Shelby for U.S. Senate Committee 1985-86

Volunteer, Richard Shelby Campaign Committee 1983-84

Political contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify the specific amounts, dates, and names of the recipients.

$ 950.00 Richard Shelby Campaign Committee 1983-84

$2,000.00 Shelby for U.S. Senate 1985-86

$2,000.00 James for Governor 1985

$ 500.00 Baxley for Governor 1986

$ 500.00 Flippo for Governor 1990

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

SEE ATTACHMENT B

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

SEE ATTACHMENT C

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

SEE ATTACHMENT C

3. Has anybody made you a commitment to a job after you leave government?

NO

4. Do you expect to serve the full term for which you have been appointed?

YES

ATTACHMENT B

Qualifications:

For four years I was employed by a United States Representative in a legislative capacity who was a member of the House Energy and Commerce Committee. One of my principal responsibilities was to track, to be aware of, to draft amendments to, and to draft position papers with respect to securities legislation pending or anticipated to be pending in the United States House of Representatives. For more than three years I was employed by a member of the United States Senate who was a member of the Senate Banking, House and Urban Affairs Committee. One of my primary responsibilities was to track, to be aware of, to draft amendments to and to draft position papers with respect to securities legislation pending or anticipated to be pending in the United States Senate. For approximately four years I was engaged in the private practice of law in Montgomery, Alabama, where I worked principally in the area of public finance as issuers' counsel, underwriters' counsel and/or bond counsel. My work included such areas as private placements, negotiated municipal debt offerings, bid municipal debt offerings, and the like.

I was educated at Auburn University, the University of Alabama School of Law and The George Washington University School of Law. I am admitted to practice law in the District of Columbia and the State of Alabama. I am a member of several bar associations.

ATTACHMENT C

Future Employment Relationships:

1. I intend to sever all ties with Miller, Hamilton, Snider, Odom & Bridgeman ("Miller, Hamilton") prior to taking the oath of office as Commissioner. In addition, I intend to resign as the Director of The Pilot Group, L.C. and I intend to sever all ties with The Pilot Group, L.C., if confirmed. As a Commissioner, I intend to disqualify and recuse myself from matters before the Commission in the nature of a request on behalf of a specific party for an exemption from a rule or statute of general applicability, or matters involving the institution of enforcement proceedings, under the following circumstances:

(a) where Miller, Hamilton or The Pilot Group, L.C., represents any party, or

(b) where any of the clients of Miller, Hamilton or The Pilot Group, L.C., each of whom paid Miller, Hamilton or The Pilot Group, L.C., more than $5,000 in fees as a result of services that I have rendered, is a party, or

(c) where I gained significant knowledge while I was with Miller, Hamilton or The Pilot Group, L.C..

I understand that, as required by 18 U.S.C. 208, I must recuse myself from any matters which involve or may substantially affect a financial interest of my spouse, my dependent children,

ATTACHMENT C CONTINUED

or myself, or I must obtain a written waiver of such disqualification under 18 U.S.C. 208(b)(1). This includes any financial interest we may have or may hereinafter acquire due to ownership of securities. See Exhibit 1.

In addition, I intend to disqualify and recuse myself, on a case-by-case basis, with respect to any matter, where, in order to avoid the possible appearance of impropriety, it appears desirable to me to disqualify myself, despite the lack of any actual conflict of interest. Notwithstanding the foregoing, however, in general, it is not my intention to recuse myself from general policy considerations, rule-making proceedings, or legislation.

2. After completing service I expect to return to private sector employment, which could include employment with Miller, Hamilton, or The Pilot Group, L.C., though I have no offer of employment by Miller, Hamilton or The Pilot Group, L.C. for such employment, nor have I committed myself to return to employment with Miller, Hamilton or The Pilot Group, L.C.

EXHIBIT 1

Merrill Lynch Fund for Tomorrow (IRA)

Merrill Lynch Retirement Reserves (IRA)

Amex Life Assurance Company Privileged Assets (non-qualified tax deferred annuity program)

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

SEE ATTACHMENT C

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

SEE ATTACHMENT C

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

NONE

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

During the past ten years I have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of the following legislation at the national level of government: deletions from the Coastal Barrier Resources Systems Act, oil price decontrol legislation, hydroelectric power licensing legislation, various immigration issues, the tariff on imported brooms containing in part broom corn, and credit card legislation.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

See Attachment C.

vii. criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

To the best of my knowledge, none, other than in connection with a top secret security clearance while an employee of the U.S. Senate and other than in connection with the current nomination.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

SEE ATTACHMENT D

ATTACHMENT D

Civil and Criminal and Investigatory Actions:

2. I have never been disciplined or cited for a breach of ethics or unprofessional conduct or been the subject of a complaint to any court or administrative agency. I was the subject of a complaint filed by a disgruntled client in 1978 with the Tuscaloosa County Bar Association. This complaint was routinely investigated by the Committee of jurisdiction composed of representatives from the Tuscaloosa County Bar Association and subsequently dismissed for lack of factual basis. It was not referred to the Alabama State Bar Association as it was determined that the complaint did not warrant any further attention. The complaint arose from an Alabama District Court case in which the client was unhappy with the outcome.

Signed: Richard J. Roberts

Date: August 21, 1990

The undersigned certifies that the information contained herein is true and correct.

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REPLY TO:

September 26, 1990

The Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
534 Dirksen Building
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are my answers to the questions submitted to me following my confirmation hearing. I hope that my answers are responsive to the Committee's concerns and interests. Obviously I stand ready to respond in any way to help the Committee complete its review.

Sincerely,

Richard Y. Roberts

Richard Y. Roberts

Questions from Senator Donald W. Riegle, Jr.

Q1: As I noted at your September 21 hearing, many top corporate officials have expressed concerns in hearings before this Committee that the short-term perspective of our investment community is afflicting American industry. At your hearing you agreed this was a problem and indicated your belief that certain of our tax policies contributed to this problem. Do you also believe that certain aspects of the ways in which our capital markets are presently organized contribute to creating a short-term perspective in our investment community? If you do and if confirmed, will you work to have the Commission look at this problem and give us a report on what changes in our capital markets might be needed to deal with it?

A1: Long-term investment is vitally important to our capital markets and to our economy and should be strongly encouraged. To the extent that investors, namely portfolio managers, have shifted their emphasis from long-term to short-term returns, it is essential that the SEC monitor this development to ensure that it does not have an adverse impact on our marketplace or the capital formation process. To some extent the securities markets have tried to facilitate the implementation of various trading strategies, such as passive indexation or index arbitrage, that have a short-term view. The fundamental question, however, is whether governmental action should be taken and, if so, in what form, to curb the recent propensity of investors, especially institutional investors, to focus on short-term performance. The answer to this question is very complicated and involves some issues beyond the SEC's area of responsibility. Nevertheless, if confirmed, I will ensure that the Commission addresses this important issue with a view towards maintaining an orderly, honest and stable marketplace.

Q2: Some market participants have expressed concern about the lack of credit and descriptive information about some municipal securities issues and issuers. The lack of such information, it is claimed, leads to unfair pricing. Do you share this concern? If so, what should be done to improve disclosure regarding municipal securities? Do you believe the disclosure guidelines proposed by a number of issuer, trustee and analyst groups sufficient?

A2: In recent years, significant attention has been focused on the subject of the adequacy of disclosure information in the municipal securities market. In the past year, the Commission and the municipal securities industry have taken a number of steps to enhance municipal securities disclosure. As you know, last year the Commission promulgated Rule 15c2-12 under the Securities Exchange Act of 1934, which became effective on January 1, 1990. The rule requires underwriters, in certain cases, to distribute to investors copies of the issuer's disclosure documents and to deliver to any potential customer upon request a copy of the final official statement from the time it becomes available until 90 days from the end of the underwriting period. This delivery obligation may cease when the final official statement is available to any person upon request of certain municipal securities information vendors, referred to as Nationally Recognized Municipal Securities Information Repositories ("NRMSIR"), but in no case less than 25 days following the end of the underwriting period.

In addition to Rule 15c2-12, the Commission also approved a Municipal Securities Rulemaking Board ("MSRB") proposal to adopt Rule G-36, which requires underwriters to submit copies of final official statements ("OS") and other documents to the MSRB for

certain new-issue municipal securities and establishes a public access facility for copying documents. On June 22, 1990, the MSRB filed three additional proposed rule changes, which would permit the Board to: (1) establish and operate a central electronic facility, the Municipal Securities Information Library ("MSIL") for the storage and dissemination of official statements and other descriptive information; (2) require that advanced refunding documents be submitted to the MSRB for inclusion in MSIL; and (3) establish a central facility to accept voluntary submission of continuing disclosure information electronically for retransmission to the market.

In addition to these initiatives, a number of other groups, including the Government Finance Officers Association, the National Council of State Housing Agencies, the American Bankers Association and the National Federation of Municipal Analysts have all put forth for discussion voluntary disclosure guidelines, applicable to both new issue trading and to secondary market trading.

I believe that all of these proposals represent significant efforts toward improving the quality and quantity of municipal securities disclosure. I am very concerned about market inefficiencies that are the result of a lack of adequate information in the market and I am encouraged by the progress that has been made to date to enhance the level of information available to municipal securities investors.